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The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3 _____

4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6 _____

7 EX PARTE LUNDY LEWIS

8 _____

9 Appeal 2009-000889
10 Application 09/577,232
11 Technology Center 2400

12 _____

13 Oral Hearing Held: June 10, 2009

14 _____

15 Before LEE E. BARRETT, LANCE LEONARD BARRY, and
16 JEAN R. HOMERE, *Administrative Patent Judges.*

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19 APPEARANCES:

20 ON BEHALF OF THE APPELLANT:

21 S. JAFAR ALI, ESQ.
22 Pillsbury, Winthrop, Shaw & Pittman, LLP
23 P.O. Box 10500
24 McLean, VA 22102

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1 The above-entitled matter came on for oral hearing on Wednesday,
2 June 10, 2009, at The U.S. Patent and Trademark Office, 600 Dulany Street,
3 Alexandria, Virginia, before Kevin Carr, Notary Public.

4

5 MR. ALI: The last one is 577,232.

6 Here all the independent claims are rejected under 102 based on
7 Glitho. So, we'll focus on that, and specifically the feature we want to focus
8 on is the service parameter that represents a measure of performance of the
9 service.

10 So, essentially what -- the difference here is the specific way in which
11 you're determining whether or not service agrees to an agreed-upon service
12 level that's defined in a service-level agreement; specifically, the service
13 parameter that has a particular state, and that state represents whether that
14 service is conforming to the service -- agreed-upon service level, and that
15 service parameter is what's measuring the performance of service.

16 Glitho, on the other hand, is kind of -- it's picking up where that leaves
17 off, because once you have a quality of service degradation determination
18 for any reason, it's generating some possible ways of correcting the network
19 and addressing those -- those problems, and then, you know, an engineer
20 might go out and -- and make the changes, or you might have some
21 automatic configurations, and then retesting the network to see if that maybe
22 addresses the degraded quality of service.

23 But the difference here is that Glitho is silent on the details in terms of
24 how quality of service degradation is determined.

1 For example, in column 4 -- that's, I think, probably one of the few
2 places where it even mentions how this is determined.

3 Column 4, line 55 onwards, for example, says that the performance
4 and quality of service function determines whether there is a problem with
5 quality of service, okay, so compares it to some thresholds.

6 So, again, quality of service, determining whether that's
7 degraded -- that can relate, possible, to service level, performance of the
8 service, but it doesn't relate or specifically disclose a service parameter that
9 has a state that determines whether or not you're conforming to that service
10 level, so having the specific parameter that you're looking at, that provides
11 you with this kind of quick indicator of whether or not you're agreeing to
12 that service level, and Glitho simply just doesn't have any details on that.

13 It just kind of starts right there, and it says once you determine that
14 there's a QS problem, this is what you might do. It doesn't say what kind of
15 parameters or variables are used to determine that.

16 JUDGE BARRETT: Let's just take a look at the claim, sort of
17 limitation by limitation.

18 Okay.

19 So, it says "determining a service parameter representative of measure
20 of performance of this service." Why can't that be just this processed raw
21 data that represents --

22 MR. ALI: Because the processed raw data is component data. It's
23 data that's coming out of devices.

1 So, I mean, if you go back up a step, it would be these component
2 parameters that are measured out of the network components. The raw data
3 is -- is component data, not service parameter data.

4 JUDGE BARRETT: Okay.

5 So, measuring a component parameter is the raw data. Is that right?

6 MR. ALI: Right.

7 JUDGE BARRETT: So, I have a -- network component
8 which -- they're measuring network components, for example the space
9 station in Figure 3, and it seems to me that indicates an operational
10 characteristic of the network component, although you say it doesn't,
11 although you don't explain it.

12 Now, determining a service parameter representative of the measure
13 of performance of the service, having a state used to determine
14 conformity -- determining a service parameter -- isn't that just saying that
15 this component parameter is a service parameter, there's a one-to-one
16 mapping?

17 Your specification on page 33, I think, just seems to talk about -- you
18 can have a one-to-one mapping between a component parameter and a
19 service parameter.

20 MR. ALI: In certain cases. In certain cases. But I would just
21 emphasize, in this -- in the context of the claim language -- we are
22 determining effect of the measured component parameter on the state of the
23 service parameter.

24 So, there's not just simply you have a component parameter and that's
25 your service. There is also this kind of -- there's some sort of relationship

1 between the component parameter and the service parameter or the state of
2 the service parameter. In other words, how is that affecting the state of the
3 service?

4 So, even if your component parameter is a one-to-one relationship
5 where it's also used as the service parameter, there is the further step of
6 determining how does that affect -- affect the state.

7 So, for example, if you went from the, you know, acceptable quality
8 of service to a degraded quality of service, you're not just going to determine
9 that you have a degraded quality of service, but you're going to determine
10 how did that component parameter cause this degraded quality of service, or
11 what was the -- you know, how -- how did that affect that -- that state.

12 JUDGE BARRETT: You measure a component parameter. So, we'll
13 say that's the raw data.

14 Determining service parameter is a one-to-one mapping between a
15 component parameter and say it's the service parameter. That component
16 parameter or service parameter has a state or a value, and it's used to
17 determine the service, the conforming of the service, because it's being used
18 against some threshold.

19 Isn't determining the effect of a measured component parameter on the
20 state of the service parameter broad enough to just mean component
21 parameter changes, the state parameter changes?

22 I mean, broadly, can't it just be a one-to-one deal? Or if not, what
23 is -- what -- where is that defined in the specification differently?

24 MR. ALI: The specific portions of the specification that refer to this
25 are --

1 (Pause.)

2 MR. ALI: On page 65 onwards, the service analysis. So, essentially,
3 you know, here, what we're -- what you're trying to do is basically diagnose
4 how certain component parameters affect state of the service parameter.

5 So, there's different, you know, algorithms that are used here,
6 propositional logic, decision algorithms, that sort of thing, that basically look
7 at the state of the service parameter and kind of go backwards and look at
8 how that -- how that was affected by certain component parameters.

9 In most cases, it would be various different component parameters,
10 and you can determine, okay, this affected it by 2 percent, this other
11 component parameter affected it by some other percent, or so on, and that
12 might tie back to determining, you know, which component parameters are
13 most important and that sort of thing.

14 So, essentially, those kind of describe the manner in which you're
15 determining how -- not only how a component parameter relates to a service
16 parameter -- as you said, it's one-to-one -- but how that -- how the parameter
17 affects changes in state or, you know, how it affects the state, I guess,
18 broadly speaking.

19 JUDGE BARRETT: Well, at page 4 of your -- your brief, you talk
20 about -- you say that an effectively measured component parameter on the
21 state of the service parameter is supported by the specification, page 20,
22 lines 26 through 28, which is just a discussion of component to service
23 parameter mapping.

24 It's also supported at page 23, lines 5 through 10, which -- I'm not sure
25 that really helps anything.

1 So, I mean, what you've told me here is that this effective measured
2 component parameter can just be this component to service parameter
3 mapping. I mean, I don't see you saying that this has to be interpreted by
4 page 65 onward.

5 MR. ALI: Well, I say that that might be a fair characterization if you
6 were only having component parameter, service parameter -- you know, the
7 component parameter could be a one-to-one mapping with the service
8 parameter, but there's this other question of the state of the service
9 parameter, right?

10 So, even though you could have a component parameter the same as
11 that, there's also this further thing of determining how that -- how -- the
12 effect on the state, not necessarily the effect on the parameter but the effect
13 of the state of the parameter.

14 JUDGE BARRETT: Isn't the state just the value of the -- of the
15 component -- of the parameter?

16 MR. ALI: Well, I would say that -- I think we refer to the state
17 possibly being values, but in this context, I think that, you know, we're
18 trying to get at whether it's acceptable service quality versus degraded
19 service quality, some change in the -- in the conformity of the service level
20 to the service level agreement.

21 JUDGE BARRETT: I'm not sure I see conformity there. I mean,
22 page 20 talks about the state of the service may be defined by one or more
23 service parameter values.

24 MR. ALI: That's the, you know, example given in the specification,
25 but you know, specific claims -- again, that's, you know, where we start in

1 the interpretation, and in the claims we do say that the service parameter has
2 a state used to determine conformity of the service to the agreed-upon
3 service level.

4 JUDGE BARRETT: The state is just, say, a value, and in this Glitho
5 reference, when you compare a value against a threshold or quality of
6 service against a threshold, isn't that determining conformity of -- to a
7 service? I mean --

8 MR. ALI: Well, no. In terms of my interpretation of Glitho, the way
9 that they describe this is they're referring to whether or not there's QS
10 degradation, QS problems, you know, whether or not -- basically whether or
11 not there is conformity. There's no parameter with the state that's used to
12 make that determination.

13 It just kind of broadly says if there's a QS problem or if, you know, it
14 doesn't meet certain thresholds, that would relate, at best, to service level,
15 not necessarily to this service parameter with the state that represents
16 conformity of that service level to the service level agreement.

17 All right.

18 So, there's this other data abstraction that we're using to get at
19 determining service level, whereas Glitho just kind of starts at the question
20 of service level.

21 JUDGE BARRETT: Don't you think quality of service -- I mean, you
22 have to measure some -- something has to be --

23 MR. ALI: I would agree, something does have to be --

24 JUDGE BARRETT: -- some value has to be --

1 MR. ALI: -- but Glitho doesn't have details on that. Again, Glitho
2 relates to kind of a different problem.

3 Yeah, there might be other systems that use service parameters with
4 states to determine quality of service, but it's not in Glitho, and we're talking
5 about a 102 rejection here, and in terms of the face of the reference, the four
6 corners here, there's nothing in here referring to how you get to that
7 determination that you're not conforming to the agreed-upon service level.
8 There's just -- there's no -- there's no detail there.

9 JUDGE BARRETT: How do you want us to -- I mean, what's your
10 definition of this last phrase?

11 I mean, you can't -- you can't point to just page 65 on and leave me to
12 define it for myself. I mean, I don't -- I just don't see a good definition of
13 what that is and why that is not just broad enough to be the component
14 parameter changes the state.

15 MR. ALI: You -- you could read it that broadly, and again, I would
16 just say that there is nothing in Glitho referring to a service parameter with a
17 state, and even if it's as broad as you say it is, you know, I would say great,
18 because it's not in the reference, and as far as the references that are applied
19 here, the 102 rejection that we have on the record, there's no service
20 parameter with a state.

21 So, no matter how broadly you want to read the last feature of
22 determining an effect, it's simply not in the reference.

23 JUDGE BARRETT: A state is just a value, right?

24 MR. ALI: Again, there's no -- there's nothing in -- in Glitho that
25 refers to a service parameter value. It just says degraded quality of service,

1 and again, I would say that refers to service level, not a parameter that's used
2 to determine conformity of the service to that service level.

3 JUDGE BARRETT: You seem to be reading things in that I really
4 don't see in the claim, these things about state, state of the service parameter,
5 the broad terms, you know, mapping or, you know, determining a service
6 parameter from -- from service.

7 MR. ALI: They're perhaps broad terms, but I mean, the reason why
8 they're so broad is that we haven't seen -- we haven't been presented with a
9 reference that uses some sort of data abstraction, some sort of parameter to
10 determine service level or to conform it to agreed-upon service level.

11 Glitho -- like I said, it picks up later on. It kind of defers to other
12 back-end systems to determine whether or not there is a -- or how to
13 determine whether or not QS is degraded. It picks up when you determine
14 that QS is degraded, how do you resolve that, how do you diagnose that,
15 how do you, you know, quote/unquote, "self-engineer" a network to
16 overcome that.

17 (Pause.)

18 MR. ALI: I understand your concerns over the breadth of the
19 language, but you know, what we have to go on is what's in the reference,
20 and given that it's a 102 and that there's -- there's no detail relating to a data
21 abstraction such as a parameter that's used to determine whether or not QS is
22 degraded, all it does is determine whether or not it is degraded, you know.

23 So, as far as the claim language, determining conformity of the
24 service to the agreed-upon service level, that's it. It doesn't have any -- it
25 doesn't disclose any sort of service parameter that's used to determine that.

1 JUDGE BARRETT: Any more questions?

2 Okay. Thank you.

3 MR. ALI: Okay. Thanks very much.

4 (Whereupon, the proceeding was concluded on Wednesday, June 10,

5 2009.)